

Justin Penn Analyzes Dismissed FCRA Claims Over COVID-19 Mortgage Forbearance Reporting

Featured Column in the February 9, 2026, Issue of the *AccountsRecovery.net ARM Compliance Digest*

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Hinshaw partner Justin Penn wrote a column featured in the February 9, 2026, edition of *AccountsRecovery.net's ARM Compliance Digest*, analyzing a Washington district court decision to grant a defendant's motion to dismiss a series of claims brought under the Fair Credit Reporting Act (FCRA). The case centered on how the defendant reported information about the plaintiff's mortgage, which was in payment forbearance during the COVID-19 pandemic.

Justin reviews how the ruling significantly narrowed a wide-ranging lawsuit that accused the defendant of improperly reporting mortgage delinquencies during and after pandemic-related forbearance periods. A narrow portion of FCRA claims tied to earlier reporting activity will proceed to further litigation, but as Justin notes, the remaining issues could still be ruled in the defendant's favor, perhaps at summary judgment.

Justin writes:

This ruling is interesting for a few reasons, and underscores the importance of seeking to dismiss claims strategically. First, the Court considered the applicable forbearance agreements even though they were not included by the Plaintiff with the complaint. Federal courts allow defendants to include documents and materials outside the complaint when they are inherently incorporated by the allegations in the complaint. For example, a breach of contract claim that does not include the contract inherently incorporates the contract itself. Here, the Court correctly took notice of the forbearance agreements to interpret the obligations with respect to the delinquency reports. Courts appear to be expanding a bit the scope of documents that they will review at a motion to dismiss, especially where, as here, the documents are not controverted by the Plaintiff.

Second, the Court gives a nice summary of the FCRA preemption of state claims. While many courts have wrangled with whether to apply total preemption, the statutory approach, or the temporal approach, this Court succinctly disposed of the issue by gathering cases to hold that total preemption applies.

Third, while this motion did not ultimately resolve all of the claims, it ruled on the remaining claims in a way that could set up a relatively straightforward summary judgment motion; namely whether Plaintiff discovered his damage, or that Plaintiff reasonably should have discovered the damages such that they are barred by the two-year statute-of-limitations period. It seems discovery for the Defendant can focus on that issue and potentially resolve the sole remaining claims.

[Read the full edition](#)

- ARM Compliance Digest: “[Court Narrows FCRA Case Over COVID Forbearance Reporting, Dismisses Most Claims](#)” (February 9, 2026)

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